

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHERYL LYNN AND	:	
CHARLES BEHYMER,	:	
	:	
Plaintiffs,	:	CASE NO. 1:17-cv-146
	:	
v.	:	
	:	
HEALTHSOURCE OF OHIO	:	
BATAVIA OB/GYN, et al.,	:	
	:	
Defendants.	:	

NOTICE OF REMOVAL

1. Under 42 U.S.C. § 233(c), the United States of America is removing to this Court a civil action originally filed by Plaintiffs Cheryl Lynn and Charles Behymer in the Court of Common Pleas, Hamilton County, Ohio. Plaintiffs Cheryl Lynn and Charles Behymer's Complaint is attached at Exhibit 1.

2. Under the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g), the Department of Health and Human Services on June 19, 2014, deemed HealthSource of Ohio Batavia OB/GYN to be an employee of the Public Health Service, and its deemed status has continued without interruption since that date.

3. Defendants HealthSource of Ohio Batavia OB/GYN, Sherry Johnson, D.O., Jeffrey Lubow, M.D., and Casey Ogburn, M.D., as employees of HealthSource of Ohio Batavia OB/GYN, were each deemed to be employees of the Public Health

Service for purposes of 42 U.S.C. § 233(a) at the time of the alleged incident out of which Plaintiffs Cheryl Lynn and Charles Behymer's action arose.

4. Under 42 U.S.C. § 233(c) and 28 C.F.R. § 15.4, the United States Attorney for the Southern District of Ohio has certified that HealthSource of Ohio Batavia OB/GYN was acting within the scope of its employment as an employee of the Public Health Service at the time of the alleged incident out of which Cheryl Lynn and Charles Behymer's action arose, and that Sherry Johnson, D.O., Jeffrey Lubow, M.D., and Casey Ogburn, M.D., employees of HealthSource of Ohio Batavia OB/GYN, an entity deemed by statute to be employees of the Public Health Service, were acting within the scope of their employment as employees of the Public Health Service at the time of the alleged incident out of which Plaintiffs' action arose. *See* United States Attorney's Certification of Scope of Employment (attached as Exhibit 2).

5. Congress has stated that “[u]pon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States” 42 U.S.C. § 233(c). Plaintiffs' Complaint has been removed properly to this Court under 42 U.S.C. § 233(c).

6. Under 42 U.S.C. § 233(a), the remedy against the United States provided by

sections 1346(b) and 2672 of title 28 is exclusive of any other civil action. Under 28 U.S.C. § 1346(b), commonly referred to as the Federal Tort Claims Act (FTCA), federal district courts are vested with exclusive jurisdiction. *See* 28 U.S.C. § 1346(b).

7. A copy of this Notice of Removal will be filed promptly with the Clerk of the Court of Common Pleas, Hamilton County, Ohio, which will effect the removal. *See* 28 U.S.C. § 1446(d).

Respectfully submitted,

BENJAMIN C. GLASSMAN
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CERTIFICATE OF SERVICE

I certify that on March 8, 2017, the foregoing Notice of Removal was filed by use of the Court's CM/ECF system, and I certify that on the same date a copy of the foregoing was sent by first class mail to:

David I. Shroyer, Esq.
Colley Shroyer & Abraham Co., LPA
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s/Matthew J. Horwitz
MATTHEW J. HORWITZ (0082381)
Assistant United States Attorney